

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY for Authority to Implement a Rate for Peaking Service as Ordered by D.00-04-060. (U 904 G)

Application 00-06-032
(Filed June 19, 2000)

**OPINION AWARDING INTERVENOR COMPENSATION TO TURN
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 01-08-020**

This decision grants The Utility Reform Network (TURN) \$ 13,403.25 for its substantial contribution to Decision (D.) 01-08-020. TURN's request is unopposed, and TURN has properly documented its request for compensation for all hours claimed by its attorneys and for other, miscellaneous costs. We have made minor adjustments to the amount requested by TURN in the hourly rate awarded to attorney Florio and to correct inadvertent miscalculations.

1. Background

In D.00-04-010, Ordering Paragraph 6, the Commission directed Southern California Gas Company (SoCalGas) to develop a replacement for its Residual Load Service tariff, known as the RLS tariff. The Commission ordered SoCalGas to come up with the replacement tariff because the RLS tariff was perceived by many as being anti-competitive, thwarting competition for gas transportation service in SoCalGas' service territory, and preventing efficient economic bypass from the SoCalGas system. On the other hand, any replacement tariff had to send efficient price signals to partial bypass customers in the marketplace in

order to discourage uneconomic bypass that would shift costs to SoCalGas' captive customers.

On June 19, 2000, SoCalGas filed Application 00-06-032, in which it proposed two methodologies for calculating a replacement peaking rate for the RLS tariff. The two methodologies proposed by SoCalGas were a market-based peaking service rate and an alternative cost-based peaking service rate. Many parties, including TURN, submitted comments to the two proposals advanced by SoCalGas. The Office of Ratepayer Advocates (ORA) and Watson Cogeneration Company (Watson) presented their own alternate proposals. Watson, the largest cogeneration customer on the SoCalGas system, favored a more competitive cost-based peaking rate.

In D.01-08-020, the Commission adopted a firm cost-based peaking rate and an interruptible peaking rate for customers in SoCalGas territory who utilize SoCalGas' transmission and distribution system for peaking service.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.¹ Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned

¹ All statutory citations are to the Public Utilities Code.

participation and an itemized estimate of the compensation the customer expects to request.² It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into

² To be eligible for compensation, an intervenor must be a “customer,” as defined by § 1802(b). In D.98-04-059 (footnote 14), we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.) In today’s decision, “customer” and “intervenor” are used interchangeably.

account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

After review of the NOI filed by TURN in this proceeding, the assigned administrative law judge (ALJ) found TURN eligible to file for intervenor compensation by ruling dated November 16, 2000. TURN made a suitable showing of significant financial hardship in its NOI.

4. Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. D.01-08-020 was adopted by the Commission on August 2, 2001 but was not mailed until August 6, 2001. Sixty days thereafter is October 5, 2001, and TURN filed its request on this date. TURN's request for an award of compensation is timely.

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.³ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁴ Where a party

³ Section 1802(h).

⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected. See D.89-03-063 (awarding San Luis Obispo Mothers For

Footnote continued on next page

has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.⁵

TURN was one of the only responding parties that initially supported SoCalGas' proposed market-based peaking rate proposal, but TURN also provided input on the cost-based plan. TURN was helpful in its analysis of all the suggested new peaking rates, including those presented by SoCalGas, ORA, and Watson. In particular, TURN made a substantial contribution to the Commission's final decision through its support of the SoCalGas and ORA proposals. TURN is entitled to intervenor compensation because the Commission adopted a cost-based peaking rate that included a reservation demand charge similar to the demand charges proposed by SoCalGas and ORA, which were supported by TURN, rather than the reservation charge proposed by Watson. The tariff adopted by the Commission was also designed to fairly compensate the utility for providing peaking service, and was based on the proposals of SoCalGas and ORA, supported by TURN. The Commission did not adopt the proposals of Watson and the interstate pipelines, which wanted much lower rates for their partial bypass customers. In addition, even though the Commission did not adopt TURN's policy positions, the reservation demand charge adopted in the decision much more closely reflected TURN's recommendations than those of Watson or the interstate pipelines.

Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

⁵ See D.98-04-0590, *mimeo.* at 41.

6. Reasonableness of Requested Compensation

TURN has requested compensation in the amount of \$13,786.40. We have corrected minor arithmetic errors made by TURN. Upon making these corrections TURN's, request for compensation is for \$13,788.25 as follows:

<u>Attorneys' Fees</u>		
Michel Florio	11 hrs @ \$350	\$3,850.00
Marcel Hawiger	34.97 hrs @ \$180	6,294.60
	13.19 hrs @ \$190	2,506.10
Atty Fees Subtotal		12,650.70
<u>Other Costs</u>		
Photocopying		985.96
Postage		147.95
Telephone/Facsimile		3.64
Costs Subtotal		\$1,137.55
TOTAL		\$13,788.25

6.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Here, although TURN's positions often supported those of SoCalGas, TURN coordinated closely with the utility to minimize duplication of effort. TURN also limited its testimony to address only issues relevant to core customers. TURN at times took contrary positions to those of the utility and ORA and thereby provided the Commission with a perspective on the issues that otherwise would have been lacking. The value TURN contributed is not easy to quantify; nevertheless, all of these qualitative factors lead us to conclude that TURN's participation was productive, avoided unreasonable duplication with other parties, and yielded ratepayer benefits in excess of the costs TURN incurred. Finally, TURN has not claimed compensation for all of its attorney time (see below); this reduction of hours reasonably allows for overlap and positions on which TURN did not prevail.

6.2 Hours Claimed

TURN submits time logs to document the hours claimed by its attorneys. The logs include a daily breakdown of hours for attorneys Michel P. Florio and Marcel Hawiger. TURN's documents indicate that the request for compensation for attorney time has been voluntarily reduced so that only 75% of the total time is being requested for compensation, and TURN does not bill for time spent in preparation of the compensation request. We conclude that TURN has adequately and reasonably supported the 59.15 total hours for which it claims compensation and has documented that its participation in this proceeding was efficient.

6.3 Hourly Rates

TURN requests hourly rates for Florio at \$350 for work during 2000-2001. TURN states that its intervenor compensation request in A.00-11-038 asks for an increase in Florio's rate to \$350 for work performed during fiscal year

July 1, 2000 through June 30, 2001, but TURN has not replicated the supporting documentation and argument here. The highest hourly rate that the Commission has authorized for Florio's work in 2000 is \$315.⁶ TURN's A.00-11-038 request, for an award of over half a million dollars, is still under review. Rather than delay a decision on this much smaller intervenor compensation request by asking TURN to supplement its showing in this proceeding, or by waiting until a decision issues in A.00-11-038, we will award Florio \$315 per hour for work performed during the 2000-2001 timeframe, as recently awarded in D.01-11-014. This determination does not prejudice the issue raised in A.00-11-038. Thus, our total award will reflect an adjustment for attorney time to authorize 11 hours for Florio at \$315 per hour, for a total of \$3465.00, or \$385.00 less than the amount requested.

TURN requests compensation for Hawiger at rates we have adopted previously: \$180 per hour for 2000 (D.01-03-030) and \$190 per hour for 2001 (D.01-10-008). We use those rates here and correct inadvertent miscalculations by TURN to award a total of \$8800.70 for his work in this proceeding.

Therefore, the total amount awarded for attorney's fees in this proceeding is \$12,265.70.

6.4 Other Costs

TURN's expenses include a claimed \$1137.55 for photocopying, postage, and telephone/fax charges. TURN has included detailed supporting documentation. We find these expenses are reasonable.

⁶ D.00-04-031 at p. 7.

7. Award to TURN

We award TURN \$13,403.25,⁷ which includes a minor adjustment for Florio's hourly rate during 2000-2001 and correction of inadvertent miscalculations by TURN, as discussed above.

8. Payment of Awards

SoCalGas shall pay TURN \$13,403.25 for TURN's contribution to D.0-08-020. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate) measured from the 75th day after TURN's compensation request was filed.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records should identify specific issues for which TURN requests compensation, the actual time spent by each employee, the applicable hourly rate and any other costs for which compensation may be claimed.

9. Waiver of Comment Period

This is a decision on a request for compensation pursuant to § 1801 et seq.; accordingly under § 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

⁷ \$12,265.70 for attorney's fees plus \$1,137.55 for costs equals \$13,403.25 total compensation.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.00-06-032.

2. TURN contributed substantially to D.00-06-032.

3. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.

4. TURN has requested hourly rates of \$180 and \$190 for attorney Marcel Hawiger (for 2000 and 2001, respectively) that already have been approved by the Commission.

5. We lack the support, in this proceeding, which would permit us to assess TURN's request that we establish a rate of \$350 per hour for Florio for 2000-2001. That support, filed with TURN's request for intervenor compensation in A.00-11-038, is still under review.

6. Under the circumstances, it is reasonable to award Florio \$315 per hour for work performed during 2000-2001, since this is the highest hourly rate we have previously approved for him. It would not be reasonable to delay a decision on this intervenor compensation request by asking TURN to supplement its showing in this proceeding or by waiting until a decision issues in A.00-11-038.

7. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$13,403.25 for its contribution to D.00-06-032.

3. Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without unnecessary delay.

5. Our determination to award Florio \$315 per hour for work during 2000-2001, does not prejudice TURN's request in A.00-11-038 for an increase in his hourly rate to \$350 per hour.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$13,403.25 in compensation for its substantial contribution to Decision 00-06-032.

2. Southern California Gas Company (SoCalGas) shall pay TURN the award granted by Ordering Paragraph 1. Payment shall be made within 30 days of the effective date of this order. SoCalGas shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning with the 75th day after October 5, 2001, the date TURN's request was filed.

3. The comment period for today's decision is waived.

4. Application 00-06-032 is closed.

This order is effective today.

Dated _____, at San Francisco, California.